685.

SUPREME COURT OF THE UNITED STATES.

No. 76.

THOMAS E. ELLIS, JONATHAN M. HILL, DANIEL ROPER, AND T. B. BETHEA, PLAINTIFFS IN ERROR,

VS.

THOS. JONES, ADMINISTRATOR OF MONTRAVILLE D. TAYLOR, DECEASED.

IN ERROR TO THE CIRCUIT COURT U. S., FOR THE SOUTHERN DIST. OF ALABAMA.

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S. D. Langtree, Print.

THOS. JONES, adm'r., &c.,
vs.
THOS. E. ELLIS, et als.

Circuit Court of the United States, for the ninth Judicial Circuit, southern District of Alabama.

Know all men by these presents, that we, Tristram B. Bethea, James Battle and George M. Rives, are held and firmly bound unto the above named Thomas Jones, administrator, in the sum of eight thousand dollars, to which payment, well and truly to be made, we, and each of us, bind ourselves and each of our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this thirty-first day of December, in the year of our Lord one thousand eight hundred and forty.

The condition of the above obligation is such, that whereas, the above named Tristram B. Bethea has sued out his writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled cause by the Circuit Court of the United States, for the ninth Judicial Circuit and southern district of Alabama:

Now, therefore, the condition of this obligation is such, that if the above bound T. B. Bethea shall prosecute his said writ of error to effect, and answer all damages and costs, if he shall fail to make good his said writ of error, then this obligation to be void, otherwise to remain in full force and effect.

T. B. BETHEA, [L. S.]
JAMES BATTLE, [L. S.]
GEO. M. RIVES. [L. S.]

Signed, sealed and delivered in presence of
E. C. SOUTHWORTH.

UNITED STATES OF AMERICA.

Circuit Court of the United States, for the ninth Judicial Circuit, Southern District of Alabama.

To Thomas Jones, administrator of M. D. Taylor, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the Circuit Court aforesaid, wherein Tristram B. Bethea is plaintiff, and you are defendant in error, to

show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice done to the parties in their behalf.

Witness the Hon. William Crawford, Judge of the Circuit Court of the United States, for the ninth Judicial Circuit and southern district of Alabama, this thirty-first day of December, in the year of our Lord one thousand eight hundred and forty.

WM. CRAWFORD.

UNITED STATES OF AMERICA.

Circuit Court of the United States, for the ninth Judicial Circuit, Southern District of Alabama.

November Term, 1840.

The President of the United States to the Judges of said Circuit Court, greeting:

Because, in the record and proceedings, and also in the rendition of a judgment of a plea which is in said Circuit Court before you, between Thomas Jones, administrator, etc., plaintiff, and Thomas E. Ellis, Jonathan M. Hill, Daniel Roper and T. B. Bethea, defendants, a manifest error hath happened to the great damage of the said defendants, as by their complaint appears, and we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf—do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to law and the custom of the United States should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of [L. S.] said Circuit Court, this fourth Monday of November, in the year of our Lord one thousand eight hundred and forty.

Issued the first day of February, in the year of our Lord one thousand eight hundred and forty-one.

Attest, DAVID FILES,
Clk. C. C. So. dist. Ala.

I have executed the above writ of error.

DAVID FILES,
February 1st, 1841. *C. C. C. S. D. Ala.*

Pleas had before the Hon. the Circuit Court of the United States, for the ninth Judicial Circuit, and southern district of Alabama, at a term thereof begun and held in and for said district at Mobile, on the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty, before his Honor, William Crawford, Judge of said Court. Be it remembered, that heretofore, to wit, on the eighth day of November, in the year of our Lord, one thousand eight hundred and thirty-nine, Thomas Jones sued out of said Court, his writ of capias ad respondendum against Thomas E. Ellis, Jonathan M. Hill, Daniel Roper and T. B. Bethea, in the words and figures following, to wit:

THOMAS JONES, *Admr.*
vs. } 2461.
THOMAS E. ELLIS, *et al.*

UNITED STATES OF AMERICA:
Circuit Court of the United States for the ninth Judicial Circuit, Southern District of Alabama.

The President of the United States to the Marshal of said District, greeting:

You are hereby commanded to take the bodies of Thomas E. Ellis, Jonathan M. Hill, Daniel Roper & T. B. Bethea, who are citizens of the State of Alabama, and them safely keep so that you have them before the Hon. the Circuit Court aforesaid, at the place of holding said Court at Mobile, on the fourth Monday of November instant, to answer unto Thomas Jones, who is a citizen of the State of North Carolina, and administrator of all the goods and chattels, rights & credits which were of Montraville D. Taylor, deceased, in a plea that they render unto him the sum of five thousand dollars which to him they justly owe, and from him they unjustly detain, &c. to his damage five thousand dollars. Herein fail not, and have you then and there this writ.

Witness the Hon. Roger B Taney, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court, this second Monday of [L. S.] April, in the year of our Lord one thousand eight hundred and thirty-nine; issued the 8th day of November, in the year of our Lord one thousand eight hundred and thirty-nine.

Attest: DAVID FILES,
Clerk C. C. Southern District of Alabama.

Wilcox C. H., Ala., January 16th, 1837.

$5000.

Twelve months after date, we or either of us promise to pay Mon-

traville D. Taylor, or bearer, the sum of five thousand dollars, for value received of him, as witness our hands and seals.

THOMAS E. ELLIS, [L. S.]
JONATHAN M. HILL, [L. S.]
D. ROPER, [L. S.]
T. B. BETHEA. [L. S.]

The above is a copy in effect of the cause of action—Geo. Goldthwaite, plff. att'y, "not found." And afterwards, to wit, on the eighteenth day of January, in the year of our Lord one thousand eight hundred and forty, the said Thomas Jones sued out of said Court his alias writ of capias ad respondendum against the said Thomas E. Ellis, Jonathan M. Hill, Daniel Roper and T. B. Bethea, in the words and figures following, to wit:

Alias.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Ninth Judicial Circuit, Southern District of Alabama.

The President of the United States to the Marshal of said District, greeting:

You are hereby commanded, as before, to take the bodies of Thomas E. Ellis, Jonathan M. Hill, Daniel Roper and T. B. Bethea, who are citizens of the State of Alabama, and them safely keep, so that you have them before the Hon. the Circuit Court aforesaid, at the place of holding said Court at Mobile, on the second Monday of March next, to answer unto Thomas Jones, who is a citizen of the State of North Carolina, & administrator of all the goods and chattels, rights & credits which were of Montraville D. Taylor, deceased, in a plea that they render unto him the sum of five thousand dollars which to him they justly owe and from him unjustly detain, to his damage, five thousand dollars; herein fail not, and have you then and there this writ.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court, this fourth Monday of November, [L. S.] in the year of our Lord one thousand eight hundred and thirty-nine; issued the 18th day of January, in the year of our Lord one thousand eight hundred and forty.

Attest: DAVID FILES,
Clerk C. C. Southern District of Alabama.

Wilcox C. H., Ala., January 16th, 1837.

$5000.

Twelve months after date, we or either of us promise to pay Montraville D. Taylor, or bearer, the sum of five thousand dollars for value received of him, as witness our hands and seals.

THOMAS E. ELLIS, [L. S.]
JONATHAN M. HILL, [S. L.]
D. ROPER, [L. S.]
T. B. BETHEA. [L. S.]

The above is a copy in effect of the cause of action—Geo. Goldthwaite, plff. att'y.

Received, 18 January, 1840, and executed on T. E. Ellis, D. Roper & T. B. Bethea—Hill not found.

R. L. CRAWFORD, *U. S. M.*
By D. WHITE, *D. M.*

And afterwards, to wit, at a term of the Circuit Court of the United States for the ninth Judicial Circuit and Southern District of Alabama, begun and held in and for said District at Mobile, on the second Monday of March, in the year of our Lord, one thousand eight hundred and forty, the plaintiff filed the following declaration, to wit:

Declaration.

U. S. OF AMERICA:

The State of Alabama, Circuit Court of the U. S., March Term, 1840.

Thomas Jones, who is administrator of all and singular the goods and chattels, rights and credits which were of Montraville D. Taylor, dec'd, who died intestate, complains of Thomas E. Ellis, Daniel Roper & T. B. Bethea, in custody, &c.,—& action discontinued as to Hill, who was not served—of a plea that they render to him five thousand dollars they unjustly detain from him. For that whereas the defendants, with said Hill, heretofore, on the sixteenth (16th) day of January, 1837, at Wilcox Court House, Ala., in the District aforesaid, made their certain bill, single, sealed with their seals, now in Court ready to be shown, bearing date the day and year aforesaid, by which they, the said defendants, then and there promised to pay to the said plaintiff's intestate, or bearer, the above mentioned sum of five thousand dollars, twelve months after date, for value of him rec'd, and then & there delivered the said bill to the said plaintiff's intestate, who has departed this life before the and the said plaintiff avers that no part of said debt, in the life time of his said intestate, and none since his death to the said plaintiff, altho' the said defendants were liable so to pay, and have been often the same to pay. By means of which the said plaintiff has ob-

tained an action against the said defendants & hence he says he has sustained damage five thousand dollars, & therefore he sues.

GEO. GOLDTHWAITE, *for plff.*

The plaintiff brings into Court here his letters of administration, by which it will appear he is administrator of the said Montraville D. Taylor, dec'd.

GEORGE GOLDTHWAITE.

Whereupon, afterwards, to wit, at the same term of said Court, the defendant Bethea filed his plea in the words and figures following, to wit:

Plea.

State of Ala. So. Dist. of Ala., March Term, 1840.

1. And the said Tristram B. Bethea, one of the said defendants, by his attornies, comes and defends the wrong & injury, when,&c., and saith that the said writing obligatory in the said plaintiff's declaration mentioned, was made by the said Thomas E. Ellis as principal, and by the said Hill, Roper and this defendant as sureties for the said Ellis, and that the same was delivered by said Ellis to said plaintiffs as such principal debtor, and not in any manner otherwise; to wit, on the day of the date thereof, in the district aforesaid; and the said defendant further avers that the consideration for which said writing was executed and delivered to said intestate, passed from said intestate to the said Ellis alone, and that the said Hill, Roper and this defendant, received no consideration whatever for executing and delivering the same, but that they executed the same solely at the instance and request of said Ellis, and as his sureties only, and that of said fact the said intestate at the time of the date thereof in the district aforesaid had full notice; and the said defendant avers that at the time of the making of the said writing, and at the time of the maturity thereof, and for a long time thereafter, to wit, until the day of in the year 1839, the said Thomas E. Ellis was solvent and in good credit, and had property subject to levy and sale by execution more than sufficient to satisfy the said demand, and all costs, damages and interest thereon, to wit, in the district aforesaid; and the said defendant further avers that after the maturity of the said writing obligatory, to wit, on the day of July in the year 1838, the said defendant in the lifetime of the said intestate, the said defendant did give notice to the said intestate, in his lifetime, that he was required to institute suit for the recovery of the debt without delay, as he was unwilling to continue further bound for said principal, to wit, in the district aforesaid, and while said principal was still solvent; and the said defendant further avers, that the said debt might and could by reasonable diligence have been collected of said principal, had suit been commenced and prosecuted as required by said notice, but this defendant avers that said intestate did not nor would prosecute his said demand in compliance with said notice within a reasonable time thereafter, but

wholly failed to commence suit for the recovery thereof until the commencement of this suit; and said defendant further avers that the said Ellis hath become and is insolvent, and that the same cannot now be made or recovered by execution or otherwise, howsoever; all which this defendant is ready to verify, wherefore he prays judgement, &c.

2. And the said T. B. Bethea, one of the defendants, for further plea in this behalf, saith actio. non, &c., because he saith that said writing obligatory in said plaintiff's declaration mentioned, was made by the said Thomas E. Ellis as principal, and by the said Hill, Roper and this defendant as sureties for the said Ellis, and that the same was delivered by said Ellis to said plaintiff's intestate as such principal debtor, and not in any manner otherwise, to wit, on the day of the date thereof, in the district aforesaid; and the said defendant further avers that the consideration for which said writing was made and delivered to said intestate, passed from said intestate to the said Ellis alone, and that the said Hill, Roper, and this defendant received no consideration whatever for executing the same, but that they executed the same solely at the instance and request of the said Ellis and as his sureties only, and that of said fact the said intestate at the time of the date thereof in the district aforesaid had due notice; and the said defendant avers further, that after the maturity of said obligation, to wit, on the day of July, in the year 1838, in the district aforesaid, in the life-time of said plaintiff's intestate, he the said defendant, did give notice in writing to him, the said plaintiff's intestate, that he, this defendant, was unwilling further to continue surety for the said Ellis, and that he was required to proceed according to law, by suit against said Ellis, for the recovery of the amount due by said obligation; and the said defendant further avers that the said plaintiff's intestate did not nor would comply with the requirement of said notice, but that he, and the said plaintiff, have indulged said Ellis from and after the time of said notice, until the day of the commencement of this suit, and did not nor would commence suit against said Ellis within a reasonable time after the giving of said notice, which suit might have been commenced in the Circuit or County Courts of Wilcox county, Ala., where said Ellis resided, or in this court, but that no suit whatever was commenced, wherefore he, this defendant, according to the form of the statutes in such cases made and provided, is discharged and exonerated; all which he, this defendant, is ready to verify, wherefore he prays judgment, &c.

STEWART & EASTON,
GORDON & OGDEN,
Atto's for T. B. Bethea.